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Setting the record straight on charities and political speech

By: Tim Delaney

There's a core American belief that just about everyone agrees with regardless of political stripes: People employed to serve the public good should not, in their official capacity, endorse or oppose candidates for public office. That core belief, long codified in federal and state laws, holds true for all public servants, whether they are government employees or representatives of charitable nonprofits, houses of worship, or foundations. Yet, some in Congress are seeking to repeal or weaken this important taxpayer protection in the omnibus spending bill.

We all received a reminder of this core value when news broke that presidential adviser Kellyanne Conway allegedly violated the Hatch Act by taking sides in the Alabama Senate race. How the White House responded has undeniable implications for the generations-old Johnson Amendment that similarly curbs partisan endorsements by charitable, religious and philanthropic organizations.

Last week, the U.S. Office of Special Counsel announced its [determination](#) that Conway violated the Hatch Act when she engaged in partisan, election-related speech on two television interviews last year. The White House responded that Conway "did not advocate for or against the election of any particular candidate," which is the legal standard under the Hatch Act. The response stressed, "In fact,

Kellyanne's statements actually show her intention and desire to comply with the Hatch Act, as she twice declined to respond to the host's specific invitation to encourage Alabamians to vote for the Republican."

The bottom line is that there is a precise line between when public employees can endorse candidates and when they cannot. Not endorsing candidates is the simple way to stay on the right side of the law and protect taxpayers from subsidizing partisan activities of others.

The same respect for taxpayers cannot be said for the attacks by the [administration](#) and some other powerful politicians on the Johnson Amendment, the longstanding tax-law protection that shields charitable, religious, and philanthropic organizations from politicking for or against candidates for public. That longstanding law provides that in exchange for enjoying tax-exempt status and the ability to receive tax-deductible contributions, 501(c)(3) organizations agree to not engage in "any political campaign on behalf of (or in opposition to) any candidate for public office."

Some contend that the Johnson Amendment curbs the free speech rights of individuals representing 501(c)(3) organizations who fear loss of tax-exempt status and charitable donations if they cross the line into partisan, election-related activities. As recently as last week, Vice President Pence told the annual [convention](#) of the National Religious Broadcasters that the Trump administration wants to repeal the Johnson Amendment on the grounds that "freedom shouldn't stop at the doors of our churches, synagogues, or places of worship."

The "freedom" which the vice president seeks to "restore" is the unfettered ability to endorse or oppose candidates for public office and to divert charitable resources to support partisan campaigns. That right already exists as organizations covered by the Johnson Amendment have a choice: Either pay for your own partisan politicking so taxpayers are not subsidizing your speech, or stay on the right side of the partisan-politicking line so you can receive tax-deductible donations. This really is no different from the narrow limits under the Hatch Act that are based on the imperative that taxpayers should not be forced to subsidize purely political activities of government employees.

As the White House acknowledged in the Conway situation, the line that distinguishes what speech is and is not allowed is very clear. Returning to the 2017 Alabama Senate race, consider the [letter](#) endorsing Republican candidate Roy

Moore signed by 50 pastors. The letter lists each pastor's name, church affiliation and town, which would raise the question of whether their endorsements violate the Johnson Amendment. They did not because of a very clear caveat provided at the end of the letter: "Church names are listed for identification purposes only."

The inclusion of the disclaimer proves the point that religious leaders and employees of charitable nonprofits can and do endorse candidates in their personal capacity, a distinction fully [authorized](#) by the IRS as an appropriate and obvious way to exercise personal speech without violating the narrow limits of the Johnson Amendment, and a way to ensure that taxpayers are not subsidizing someone else's partisan beliefs.

As Congress is racing to complete the omnibus spending bill before Passover and Easter, well-funded special interests and powerful politicians are seeking to attach an anti-Johnson Amendment rider under the guise of "free speech." In truth, their proposal would amount to forcing taxpayers to subsidize the political speech of others. All taxpayers, and particularly all charitable organizations, will suffer the consequences of politicians once again putting their own priorities above the interests of the people they serve.

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